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February 13, 1995

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VIA HAND DELIVERY

Mr. William F. Caton
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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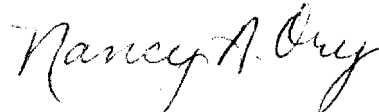
Re: MD Docket No. 95-3

Dear Mr. Caton:

Transmitted herewith on behalf of KUSK, Inc., licensee of television broadcast station KUSK(TV), Channel 7, Prescott, Arizona, are an original and four copies of its Comments in the above-referenced rulemaking proceeding.

Should there be any questions concerning this matter, please contact the undersigned.

Respectfully submitted,



Nancy A. Ory

Enclosures

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1995)

MD Docket No. 95-3

To: The Commission

COMMENTS OF KUSK, INC.

KUSK, Inc. ("KUSK"), licensee of television broadcast station KUSK(TV), Channel 7, Prescott, Arizona, by its attorneys, hereby comments on the above-captioned Notice of Proposed Rule Making ("NPRM"), released on January 12, 1995.

In the NPRM, the Commission proposes to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for Fiscal Year 1995 pursuant to Section 9 of the Communications Act of 1934, as amended (the "Act"). 47 U.S.C. § 159 (1994). Under the proposed schedule, regulatory fees for commercial television stations are determined exclusively from the rankings of each station's Arbitron Area of Dominant Influence ("ADI"), as published by Warren Publishing in the 1994 Edition of the Television and Cable Factbook (No. 62). See NPRM at ¶ 32.

While ADI market ranking is one indicator of a commercial station's audience coverage and could be perceived superficially as a predictor of potential revenue -- and thus station value -- the classification of commercial television stations by ADI for purposes of the fee schedule is improper, as exclusive reliance on such rankings fails to take into account the actual audience coverage and performance of each individual station assigned to a market. This deficiency is particularly evident in the case of commercial television stations licensed to small communities located substantial distances from large metropolitan areas, but still included in the ADI, which are assessed burdensome regulatory fees bearing no relation to station revenues or to the actual market that the station serves.

Section 9(b)(1)(A) of the Act requires that the annual regulatory fees assessed be "adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage" 47 U.S.C. 159(b)(1)(A) (1994). The selection of ADI market ranking as the sole determinant of the fees assessed fails to account for commercial television stations located in "Non-ADI Markets." See Broadcasting and Cable Yearbook, p. C-202 (1994). A "Non-ADI

Market" is defined as a single-county market that did not achieve ADI status because the preponderance of viewing is not to the home-market station. The counties included in the "Non-ADI Market" list are assigned solely as a matter of convenience to the ADI that receives the preponderance of the viewing within each county. Id. Such assignment has enabled Arbitron to assign every county to an ADI.

KUSK(TV) is licensed to Prescott, Arizona, one such "Non-ADI Market." As demonstrated herein, the proposed regulatory fee assessment for KUSK(TV) for Fiscal Year 1995 is unfairly exorbitant and will greatly impair the ability of KUSK(TV) to continue to serve its community of license and the surrounding areas.

The considerations that provide the logical framework for distinguishing among stations based upon the ranking of the ADI to which they are assigned for purposes of differentiation of regulatory fees compel that "Non-ADI Market" stations be treated as a separate class of stations for such purposes, and not be mechanically assessed with the same annual regulatory fee as true ADI stations. Yavapai County, Arizona has been included with the Phoenix, Arizona Arbitron ADI market, not because of the level of viewing of KUSK(TV) in Yavapai County, but because the residents

of Yavapai County most often watch stations other than KUSK(TV) which are licensed to Phoenix. The Phoenix, Arizona Arbitron ADI has been designated market number 21 in Arbitron's ADI rankings for 1993-1994. Broadcasting and Cable Yearbook, Arbitron ADI Market Atlas, p. C-177 (1994). Accordingly, due to its inclusion in the Phoenix, Arizona Arbitron ADI, KUSK(TV) is proposed to be assessed a regulatory fee for Fiscal Year 1995 of \$19,075, the same fee to be paid by the ABC, NBC and CBS network affiliates licensed to Phoenix.

Prescott, Arizona, the community of license of KUSK(TV), is located approximately 96 miles from Phoenix. Rand McNally Road Atlas, p. 8 (1992 edition). Indeed, as noted above, because not even a preponderance of the residents of Yavapai County watch KUSK(TV), their local station, Yavapai County is included in Arbitron's list of "Non-ADI Markets." See Broadcasting and Cable Yearbook, p. C-202 (1994). Viewers in KUSK(TV)'s home county predominantly watch television stations licensed to Phoenix via cable and translators.^{1/} Thus, as a result of the encroachment

^{1/} If the predominance of viewing was to KUSK(TV), the only station licensed to Yavapai County, Yavapai County would be its own ADI, much as neighboring Flagstaff, Arizona, which is a single-county ADI. The regulatory fee for such a single-county ADI would be much less than that for the Phoenix ADI; by way of example, the network affiliate in the Flagstaff ADI is proposed to be charged a regulatory fee of
(continued...)

of television stations licensed to Phoenix by way of translators and cable, Prescott and Yavapai County, Arizona have been included in the Phoenix, Arizona Arbitron ADI. It makes no sense whatsoever to assess the same regulatory fee for KUSK(TV) as that to be paid by the dominant Phoenix stations, since the basis for the inclusion of Yavapai County in the Phoenix ADI is premised not upon the strength of the viewership of KUSK(TV), but rather upon the lack of such viewership.

As an independent television station serving a discrete market in central Arizona, KUSK can ill-afford to pay the same regulatory fees as the network affiliates serving the Phoenix metropolitan area. The following chart amply illustrates the burden placed on KUSK by the cost-prohibitive regulatory fee as compared to the fees paid by other stations in the Phoenix and Flagstaff ADIs:

^{1/}(...continued)
only \$5,950.

PHOENIX AND FLAGSTAFF ADI VHF TV STATIONS^{2/}

<u>Station/ Channel</u>	<u>City of License</u>	<u>Net Weekly Circ.</u>	<u>Highest 30-sec Rate</u>	<u>Proposed 1995 Regulatory Fee</u>
KPHO/5	Phoenix	857,400	\$2,500	\$19,075
KPNX/12	Mesa	928,500	not avail.	\$19,075
KTSP/10	Phoenix	961,800	\$4,200	\$19,075
KTVK/3	Phoenix	960,400	\$6,000	\$19,075
KUSK/7	Prescott	48,300	\$ 120	\$19,075
KNAZ/2	Flagstaff	53,100	\$ 360	\$ 5,950
KKTM/13	Flagstaff	12,000	\$ 250	\$ 5,950

As illustrated above, KUSK is required to pay the same regulatory fee as stations charging up to 50 times more for a 30-second advertising spot. Furthermore, KUSK's regulatory fee is more than three times the regulatory fees of stations licensed to nearby Flagstaff, Arizona, despite the fact that KUSK(TV)'s highest 30-second rate is less than half of the highest 30-second rate of stations licensed to Flagstaff.

Section 9(d) of the Act provides the Commission with the authority to "waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. § 159(d) (1994). On July 29, 1994, KUSK filed a "Petition for Reduction of Regulatory

^{2/} Television & Cable Factbook (1994).

Fees." The licensee has not been awarded any reduction in the 1994 fee, which was paid in full, and has learned informally that its petition -- as well as others seeking similar fee reductions -- has not even been considered yet. In order to properly exercise its authority under Section 9(d), however, the Commission will likely continue to call for a detailed case-by-case analysis of each licensee's individual financial circumstances in the case of separate reduction requests. Such case-by-case analysis is not practical and places an untenable burden on the Commission's resources, as evidenced by the lack of consideration of such pleadings filed with respect to the 1994 fees. The more logical, and practical course, is for the Commission to establish a separate category for fees assessed television stations in "Non-ADI" markets.

Conclusion

For the foregoing reasons, the proposed regulatory fee schedule for commercial television stations should be revised to account for stations that are located in "Non-ADI Markets." Such stations will be significantly burdened by the arbitrary assessment of annual regulatory fees for commercial stations operating in far larger markets where these stations have highly limited service, at best. Implementation of the requested rule

revision will greatly facilitate the ability of stations located in such "Non-ADI Markets" to continue to serve viewers in their designated community of license and the surrounding immediate areas.

Respectfully submitted,

KUSK, INC.

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